

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

LODSYS GROUP, LLC,

Plaintiff,

v.

CAPCOM U.S.A., INC.,

Defendant,

v.

APPLE INC.,

Intervenor and Counter-
Claimant.

CIVIL ACTION NO. 2:13-cv-00389-JRG

INTERVENOR APPLE INC.'S NOTICE OF CASE MANAGEMENT SUBMISSION

Intervenor Apple Inc. (“Apple”) hereby submits this statement to request permission to file a summary judgment motion on the issues of patent license and exhaustion as soon as is practicable in Case No. 2:13-cv-00389 (the “Action”) and that the Court waive its letter brief requirement with respect to the filing of such motion, as was done in the first action filed by plaintiff Lodsys, LLC (now Lodsys Group, LLC) (“Lodsys”). *See* Case No. 2:11-cv-00090, Dkt. No. 377.

As the Court is aware, Apple was permitted to intervene in an earlier, related proceeding with respect to the issues of patent license and exhaustion. Case No. 2:11-cv-272, Dkt. No. 105 (later consolidated with lead case 2:11-cv-00090, the “*Brother Int’l* Action”). As Apple demonstrated in connection with its motion seeking leave to intervene, Lodsys’s infringement allegations relate to technology and services provided largely or exclusively by Apple as to which Apple is licensed. *See* generally Case No. 2:11-cv-272, Dkt. No. 4 (Apple’s

Motion to Intervene). Lodsys did not oppose Apple's intervention in the Action, which present the same or similar issues. *See* Case No. 2:13-cv-00389, Dkt. No. 7 (Apple's Unopposed Motion to Intervene).

An early summary judgment motion on Apple's license and exhaustion defenses will not cause delay or otherwise disrupt the case schedule in the Action. Apple anticipates that only very limited discovery will be required to present this issue, given that Lodsys has already had a full opportunity to pursue discovery from Apple and its developers in the *Brother Int'l* Action. Among other things, Apple has already produced thousands of pages of technical and licensing documents, responded to Lodsys's written discovery requests, presented corporate designees regarding technical and licensing issues for deposition testimony, and assembled and provided access to its source code. This discovery will in most cases be equally applicable in the Action.

Furthermore, summary adjudication of Apple's license and exhaustion defenses will best advance the interests of efficiency and judicial economy. Because Lodsys's infringement allegations with respect to iOS products revolve around the use of licensed Apple technology, an early summary judgment motion could moot or refine many of the claims and defenses in this action and avoid the need to proceed with wasteful discovery, motion practice, and other pretrial proceedings in the Action. Indeed, on July 22, 2013, Apple filed a motion for summary judgment in the *Brother Int'l* Action, asserting that Lodsys's claims based on sales through the Apple App Store were barred both by Apple's License and by the doctrine of patent exhaustion. *See Brother Int'l* Action, Dkt. No. 767.

For the reasons set out above, Apple respectfully requests that the Court permit an early motion for summary judgment on the issues of license and patent exhaustion with respect

to Lodsys's claims against the defendant in the Action and waive its letter briefing requirement with respect to such motion.

Dated: August 22, 2013

Respectfully submitted,

By /s/ Melissa Richards Smith

Melissa Richards Smith

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**Counsel for Intervenor and Counter-Claimant
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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this the 22nd of August, 2013.

/s/ Melissa Richards Smith

Melissa Richards Smith